



Region 10 Briefing Paper for the Office of the Regional Administrator

MEETING/EVENT TITLE: Deschutes Total Maximum Daily Load (TMDL) Action

MEETING DATE: May 21, 2018

LOCATION: ET Conference Room

PREPARED BY: Miranda Hodgkiss

DATE: May 17, 2018

ATTENDEES: Dan Opalski, Laurie Mann, Miranda Hodgkiss, Leah Brown, Cara Steiner-Riley

EXTERNAL PARTICIPANTS: N/A

I. REQUESTING OFFICE

R10 OWW – Watershed Unit

II. TIMING

Court-ordered deadline of June 29, 2018 for Agency action.

III. PURPOSE

We are holding this briefing to inform the RA of our proposed action on the Deschutes TMDL. The Agency action will include a number of disapprovals of state-submitted TMDLs for multiple pollutants. The Agency will also be approving a portion of the state-submitted TMDLs. The purpose of this briefing is to provide pre-decisional information, in order to increase the RA's awareness and allow for coordination with his counterparts at Headquarters.

IV. BACKGROUND/HISTORY

Timeline

- *December 17, 2015* – Washington Department of Ecology submitted the final Deschutes TMDL to EPA for approval.
- *July 17, 2017* – Ecology submitted supplemental TMDL information, including new bacteria loads and a temperature equation.
- *September 6, 2017* – Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission within 30 days.
- *June 29, 2018* – Court-ordered deadline for Agency action.

Background

The Washington Department of Ecology submitted the final Deschutes TMDL to EPA for approval on December 17, 2015. The TMDL addresses 73 waterbody-pollutant pairs for five pollutants – fecal coliform, temperature, dissolved oxygen (DO), pH, and fine sediment. EPA must take action on each waterbody-pollutant pair – essentially requiring 73 individual decisions to either approve or disapprove loadings developed for a

waterbody-pollutant pair. This TMDL is the first phase of a multi-phase process to address water quality impairments for waters flowing into south Puget Sound. The watershed addressed in this phase includes the Deschutes River and its tributaries, Percival Creek, and the tributaries to Budd Inlet. The Deschutes River originates in heavily forested regions of the Bald Hills, then flows northward into Capitol Lake (in Olympia), then into Budd Inlet (south Puget Sound). Capitol Lake was formed in 1951 as an impoundment of the Deschutes estuary to create a reflecting pool for the State Capitol Building. The TMDL watershed is situated within the boundaries of Thurston and Lewis Counties, Washington and includes the cities or towns of Olympia, Lacey, Tumwater, and Rainier. A second phase of the TMDL to address the marine segments of Budd Inlet, impaired for DO and bacteria, is planned for completion in 2021. No plans have been made by Ecology to develop a TMDL for Capitol Lake, which is impaired for total phosphorus and bacteria.

Litigation

On September 6, 2017, Northwest Environmental Advocates (NWEA) filed a complaint against EPA alleging violation of section 303(d)(2) of the Clean Water Act (CWA) for failure to act on the Deschutes River TMDL submission. Section 303(d)(2) requires EPA to either approve or disapprove a state's TMDL submission within 30 days of submittal. The case was briefed in court, and the court rendered a summary judgement that EPA must take action by June 29.

Region 10 OWW and ORC have been consulting with counterparts at Headquarters in the Watershed Branch and Office of General Counsel (OGC) regarding the Agency's planned action on this TMDL.

V. KEY ISSUES

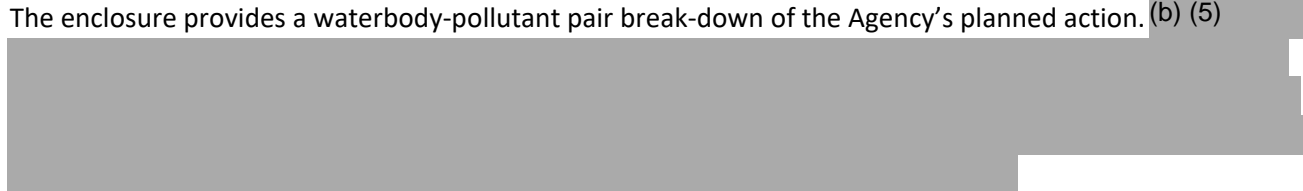
The Agency's concerns regarding the TMDL's shortcomings have been discussed with the state since early 2016. One reason the Agency has not yet acted is because we worked with Ecology during that time to remedy issues with the bacteria and temperature TMDLs. As a result, Ecology submitted supplemental TMDL information in July 2017, including new bacteria loads and a temperature equation.

Once EPA disapproves a TMDL, the Agency is obligated to develop a new TMDL within 30 days per CWA section 303(d)(2). Thus, for the waterbody-pollutant pairs we disapprove, we will need to develop revised TMDLs that remedy our concerns.


(b) (5)



The enclosure provides a waterbody-pollutant pair break-down of the Agency's planned action. (b) (5)



(
b
)
(
5
)



(b)
(5)

[REDACTED]

(b)
(5)

[REDACTED]

[REDACTED]

[REDACTED]

VII. ROLL-OUT / COMMUNICATIONS PLAN

Other than notifying the state of our final action, a communication plan has not been developed, nor is one anticipated to be necessary.

VIII. NEXT STEPS / UPCOMING DEADLINES

The Region has developed an anticipated schedule for meeting the June 29th deadline. This was put forth to the court in a declaration filed on April 4, 2018 by David Croxton, the Watershed Unit manager. The following steps represent our planned course for developing decision documents and briefing management:

- *April 23 – May 18:* R10 OWW, ORC, OGC and Office of Water (Headquarters) review draft decision document.
- *May 22 – June 15:* R10 Watershed Unit shares draft decision document with RA, Office of Water AA, and OGC for senior management review.
- *June 18 – June 28:* R10 Watershed Unit finalizes review.
- *June 29:* Agency finalizes Deschutes TMDL decision document and takes action on TMDL.